

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

FILED

ROBERT LEE MILLER,

Plaintiff,

vs.

ROBERT H. MACY, RAY ELLIOT,
JERRY FLOWERS, DAVID SHUPE,
and ROBERT WOODS,

Defendants.

MAR 13 2000
ROBERT D. DENNIS CLERK
U.S. DIST. COURT, WESTERN DIST OF OKLA.
BY *[Signature]* DEPUTY

Case No. CIV-00-0129-C

DOCKETED

ORDER

On February 8, 2000, defendants Robert H. Macy and Ray Elliot filed a "Special Appearance and Motion to Quash Summons." Although there is no such motion available in federal court, it is clear from the body of the motion that it is intended as a motion to dismiss pursuant to Fed. R. Civ. Proc. 12(b)(4)and(5) for insufficient process and insufficient service of process. Therefore, the motion will accordingly be considered and referred to as a 12(b) motion to dismiss. Plaintiff's response to defendants' motion to dismiss was due February 26, 2000 Plaintiff has failed to respond to defendants' motion.

It appears the plaintiff attempted to correct service of process by filing with the Court a "Praecipe for Summons" (DOCKET #10), on February 16, 2000. There was no indication of return of service or proof of service in connection with this document, and filing a praecipe for summons is not a sufficient response to a motion to dismiss. However,

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defendants Macy and Elliot filed a subsequent motion to dismiss on March 6, 2000, in which they omit any reference to insufficient service and their first motion to dismiss.

Because it is unclear whether or not the first motion to dismiss for insufficient service has been abandoned by defendants, Macy and Elliot, they are ordered to file an appropriate response with this Court within five (5) days from the date of entry of this order. This order does not affect any time limitations in place regarding responses to other motions, and all the motions to dismiss file by defendants, Macy and Elliot, currently before the Court for consideration will remain pending until this matter is resolved.

IT IS THEREFORE ORDERED that defendants, Robert H. Macy and Ray Elliot, shall file a response within five (5) days of the entry date of this order to state their intentions with respect to the motion to dismiss filed on February 8, 2000.

IT IS SO ORDERED this 13 day of March, 2000.


ROBIN J. CAUPHRON
UNITED STATES DISTRICT JUDGE